



SUPPLEMENT TO

The Mysore Gazette.

PUBLISHED BY AUTHORITY.

BANGALORE, THURSDAY, JANUARY 20, 1910.

Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber, Public Offices, Bangalore, on Thursday the 13th January 1910, at 1 P.M.

PRESENT.

T. ANANDA ROW, ESQ., B.A., Dewan (Presiding).

Ex-officio Members.

K. P. PUTTANNA CHETTY, ESQ. (First Councillor).

H. V. NANJUNDAYYA, ESQ., M.A., M.L. (Second Councillor).

Additional Members.

Official.

RAJAKARYAPRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.

S. NARAYANA RAO, ESQ.

D. SHAMA RAO, ESQ.

M. MUTHANNA, ESQ., RAO BAHADUR.

Non-official.

RAJAMANTRAPRAVINA C. SRINIVASIENGAR, ESQ.

M. C. RANGIENGAR, ESQ., B.A.

SYED AMIR HASSAN, ESQ.

B. TIRUMALACHAR, ESQ., B.L.

D. VENKATARAMAIA, ESQ., B.A.

A. RAMANNA, ESQ.

ABSENT.

Official.

D. DEVARA CURS, ESQ.

PRESENT.

S. HIRIYANNAYYA, ESQ., M.A., B.L. (Secretary).

The Secretary reported to the Council (1) that the following additional non-official members took their seats on the Council this day, *viz.*, 1. M. C. Rangiar, Esq., B.A., 2. D. Venkataramaiya, Esq., B.A., and 3. A. Ramanna, Esq., and (2) that the Bill further to amend the Mysore Chief Court Regulation, 1884, received the assent of His Highness the Maharaja on the 30th December 1909.

Bill for the regulation of the possession and sale of poisons in certain local areas and for the importation, possession and sale of white arsenic in Mysore.

PRESIDENT.—Last time when this Bill was considered we left at some point where there was a doubt about the word “transaction.”

MR. M. C. RANGIENGAR.—The substitution of the word “vending” for the word “transactions” was made by the Select Committee at the suggestion of the Senior Surgeon who brought to their notice that the word “transactions” covered a wider field and would bring within the scope of the Bill even ordinary Medical Practitioners who may carry or have with them small quantities of such poisonous drugs to be utilised for the benefit of their patients on emergent occasions, and that as it is only the *vending* of these drugs that ought to be controlled, this substitution was made.

After some discussion on this and some other minor points connected with the Bill, Mr. D. Venkataramaiya said—

It is somewhat difficult to see what effect this Bill, if passed, would have upon the sale of drugs in the *moffusil*. There are several persons who sell these things there. In large towns any rule which may be passed may work well. But the case of *moffusil* places has also to be considered. Perhaps, if not inconvenient, the discussion on the Bill may be postponed to the next meeting of the Council, so that we may have time to consider what effect the provisions of the Bill would have on the vending of these drugs in the country. Even in big municipalities like Bangalore there would be some difficulties. In the present state of education any restrictions that would be put upon people, for example, even the keeping of registers, would mean employment of some person who knows how to read and write.

MR. A. RAMANNA.—In seconding Mr. Venkataramaiya's motion for adjournment, Mr. Ramanna said that he wanted some time to consult the wishes of the *moffusil* men.

MR. H. V. NANJUNDAYYA.—I think the two members who spoke last are somewhat mistaken about the facts of this Bill. In the first place, the chief object of this Bill is to bring the sale of white arsenic under control so as to enable us to find out who has been vending it in any particular place. By notification, Government may, by and by, extend the provisions of this Bill to any other specified poison. We are not going to prohibit altogether the sale of this article. We are only trying to regulate the sale by insisting on licenses and on keeping proper accounts for the sale of this poison. If it is an article of every-day consumption, one may justly complain of the restriction. But as we are going to deal with such a dangerous thing as arsenic, a thing needed only under exceptional circumstances, I do not think anybody need complain on behalf of the public who obtain this article from the vendors. On this ground I think it is not necessary to postpone the consideration of the Bill to another meeting.

MR. K. P. PUTTANNA CHETTY.—In addition to what the Second Councillor has said, I have only to say that the considerations now urged by the mover and the seconder in support of their motion for postponement are such as would involve a reconsideration of the principle of the Bill which has already been accepted by the Council. The Council has already once adjourned to discuss the provisions of the Bill and I do not know if any further postponement is necessary. Anyhow, these objections have been very ably answered by Mr. Nanjundayya, and I beg to move that the further consideration of the measure need not be delayed.

Mr. D. Venkataramaiya's amendment was put to the vote and lost. (Two for and the rest *against*.)

The Bill having then been considered, Mr. K. P. Puttanna Chetty moved that it be taken up and passed at a subsequent meeting of the Council. Mr. M. C. Rangiar seconded the motion, which was put to the Council and carried.

Bill to consolidate and amend the law relating to the procedure of the Courts of Civil Judicature in Mysore.

MR. H. V. NANJUNDAYYA.—Sir—Under the Council Rules this Bill has been duly published in the Gazette and copies furnished to members. I now beg to move that the Bill be read in Council.

MR. M. C. RANGIENGAR.—I beg to second the motion that the draft Bill to amend and consolidate the law relating to Civil Procedure be read in Council.

I do not know if at this stage any observations about the provisions can be made, as I find that the Bill itself is to be referred to a Select Committee. I think I can more properly bring forward whatever suggestions I have in the matter of amendment to the provisions contained in the draft in the Select Committee. But there are two points to which I would invite the attention of the Council before the Bill goes to the Select Committee:—

(1) The proposed curtailment of the right of second appeal and (2) the omission of the provisions relating to suits against Government, while retaining the clause relating to suits by Government.

On these two questions the sense of the Council may be expressed so that the Select Committee may be free to discuss them.

MR. A. RAMANNA.—I am also of the same opinion as Mr. Rangiengar. With reference to the curtailment of the right of second appeal, it seems to me that there are more appeals of this sort to the Chief Court now, and I am not in favor of any such curtailment.

The motion was put to the Council and carried and the Bill was then taken as read. Mr. Nanjundayya then moved that the Bill be referred to a Select Committee consisting of Messrs. S. Narayana Rao, Rajamantrapravina C. Srinivas-iengar, D. Venkataramaiya, M. C. Rangiengar and himself.

This motion was duly seconded, put to the Council and carried.

Bill to consolidate and amend the law relating to the limitation of suits and for other purposes in Mysore.

MR. H. V. NANJUNDAYYA.—This Bill has also been duly published and copies have been circulated among the members. I now beg to move that the Bill be read in this Council.

Mr. D. Shama Rao seconded the motion, which was put to the Council and carried. The Bill having been taken as read, Mr. Nanjundayya moved that it be referred to a Select Committee consisting of Messrs. S. Narayana Rao, Rajamantrapravina C. Srinivasiengar, B. Tirumalachar, A. Ramanna and himself. The motion was seconded by Mr. Shama Rao, put to the Council and carried.

Bill to consolidate and amend the law relating to insolvency in Mysore.

Mr. H. V. Nanjundayya moved that the above Bill be read in Council.

Mr. Venkataramaiya seconded the motion, which was put to the Council and carried. The Bill having been taken as read, Mr. Nanjundayya moved that it be referred to a Select Committee composed of the same members as those appointed for the Limitation Bill.

The motion was seconded by Mr. Venkataramaiya, put to the Council and carried.

Bill to consolidate and amend the law relating to Guardians and Wards in Mysore.

MR. S. NARAYANA RAO.—Sir—This Bill to consolidate and amend the law relating to guardians and wards was introduced into the Council in a meeting held on the 2nd September 1909 and the Bill has since been published with the statement of objects and reasons. The history of legislation as to the law of guardian and ward in British India and the origin of the rules of 1872 at present in force in

Mysore in regard to the custody and guardianship of minors have been set forth in the statement of objects and reasons. It is hardly necessary to mention how defective and unsatisfactory these rules are which consist of a few paragraphs and purport to comprise therein not only the law of guardians and wards but also that relating to the personal property of lunatics, idiots and other individuals incapacitated by natural infirmity. The present measure deals with minors and their property only, leaving the other matters therein contained for separate treatment.

The present Bill proceeds on the lines of the British Indian Act, VIII of 1890, omitting such portions as referred to Court of Wards and some other matters not applicable to Mysore. The only important matter which requires a special mention at this stage is the definition of the term "Minor." The limit of 18 years mentioned in the said rules has been retained in the Bill, as this is the age when minority ordinarily ceases in British India, except in respect of minors for whom a Court of Justice has appointed a guardian before their attaining the age of 18 years in which case the minority is extended till the completion of 21 years. It was on these considerations that the limit of 18 years was retained in the Bill, but it is now open to the Select Committee to which the Bill will be referred, and for this Council also subsequently, to adopt the higher limit as in British India, if after further deliberation such a course be deemed advisable. I now move that the Bill be read in Council.

MR. A. RAMANNA.—In seconding the proposition of Mr. Narayana Rao, I submit that this legislation meets a long-felt want.

MR. M. C. RANGIENGAR.—Sir—With your leave I beg to say a few words on the draft Bill. As the Bill reads, it is doubtful if the legislature intends to exclude Europeans from the operation of this Regulation.

One or two points with reference to this may be usefully considered. Some time ago the present Chief Justice of Calcutta, who was at the time the Chief Justice of Bombay, expressed an opinion (in a judgment) that the Act of 1890 (The Guardians and Wards Act) of British India was rather unhappily drafted and required an amendment. This same Act has been taken as the basis and model of the present Bill. There are many points to be considered in adopting the provisions of the British Indian Act and two of those points are:—

- (1) Whether it is the intention of the legislature in Mysore to permit the appointment of a guardian for the property of a Hindu minor who is governed by the Mitakshara law (the Hindu law which prevails in Mysore is entirely of the Mitakshara School). That point came before the British Indian Courts and various opinions are recorded.
- (2) The Bill provides that security should be furnished by the guardian when he draws money on behalf of his ward in certain cases. The provision ought to be made applicable to all cases in which the guardian receives money through Court on behalf of his ward.

MR. S. NARAYANA RAO.—The suggestions made by Mr. Rangiengar should properly engage, and will no doubt engage, the attention of the Select Committee.

The motion was then put to the Council and carried and the Bill was also taken as read.

MR. NARAYANA RAO then proposed that the Bill be referred to a Select Committee consisting of MR. K. P. PUTTANNA CHETTY, RAJAMANTRAPRAVINA MR. C. SRINIVASIENGAR, MR. D. SHAMA RAO, MR. B. TIRUMALACHAR, and himself.

MR. A. RAMANNA.—While seconding Mr. S. Narayana Rao in this motion to refer the Bill to the Select Committee I would also remark that the two matters about which my colleague Mr. Rangiengar spoke, may be matter for the consideration of the Select Committee.

On motions made and seconded, the names of MESSRS. H. V. NANJUNDAYYA and RANGIENGAR were also added to the Committee and the original motion as thus amended was then adopted.

The reports of all the Select Committees appointed above were made returnable within two months from the date of the meeting.

Bill to recognise the representative character of the Administrator-General of Madras.

In presenting the report of the Select Committee on the Bill and the Bill as amended by the Committee, Mr. S. NARAYANA RAO said:—

This Bill, it will be remembered, was referred to a Select Committee on the 2nd September last, and the Committee have sent in their report, which I beg leave to present to the Council. The history and scope of this Bill have been set forth *in extenso* in the Statement of Objects and Reasons published along with the Bill. I may, however, briefly state that the Bill formally recognises the right of the Administrator-General of Madras to represent, under certain circumstances, the estate left by deceased British subjects within the Mysore State.

The Administrator-General derives his right to represent the estate of a deceased British subject under Act II of 1874 called the Administrator-General's Act. The provisions of this enactment are binding on all British subjects residing in Native States as their personal law. Thus while the British subjects residing in the Mysore State are bound to recognise the right of the Administrator-General to represent the estate of a deceased British subject in respect of which he (the Administrator-General) has obtained the letters of administration from the High Court of Madras, the non-British subjects of the State are not under a similar obligation. These may refuse to pay up the debts due by them to the estate or deliver up any property belonging to the deceased in their possession to the Administrator-General, unless a succession certificate or a decree of a competent Court of the State is produced. In order to avoid inconvenience and confusion that may arise from two sets of administrations in respect of the same estate, this Bill was framed after arriving at a definite understanding with the British Government as to the stamp duty leviable on the estate in the Mysore State. The Bill is therefore a formal one not affecting the rights of the subjects of the State.

The Bill was referred to a Select Committee on the suggestion of a possible conflict between the letters of administration issued by the Mysore Courts and those subsequently issued by the Madras High Court in respect of one and the same estate. The Committee has considered this point and, in order to obviate this contingency, have slightly amended the first clause as indicated in the Report.

I now move that, under Rule 46 of the Rules for the conduct of business of this Council, the Report and the Bill as amended by the Committee be taken into consideration.

Rajamantra Pravin. Mr. C. Srinivasiengar seconded the motion.

MR. D. VENKATARAMAIA.—If Mysore Courts recognised the rights of the Administrator-General for the assets of the British subjects, the question would remain whether the British Courts would recognise the certificates granted to British and Native subjects in the Mysore State by the Mysore Courts. In the absence of reciprocity, if we have to get life-insurance money from the several life insurance companies, even after obtaining a certificate from the Mysore Courts, we would be required to obtain a certificate from the British Courts and pay duty. It is only a fiscal arrangement. If, in the absence of any recognition of such reciprocity, we are required to resort to British Courts again, we lose money which we would get in the shape of court-fee that is otherwise payable. So far as Mysore Courts are concerned, they levy such fees on their own certificates. But these certificates are not recognised outside Mysore. There is a section in the Civil Procedure Code in regard to decrees. If we pass a decree, it may be executed in the British Courts. In the same manner, if reciprocity can be obtained in this matter also, no doubt the British subjects will pay in their place and we will pay in our place.

MR. S. NARAYANA RAO.—There seems to be a misapprehension in the matter. A succession certificate or letters of administration or probate taken out in one State is certainly not recognised by any other State. That is the law prevailing in all the European countries and it is so even in India. Probate or letters of administration taken in a British court are not recognised in a Native State and a probate issued in a Native State is not recognised in British India. It is only in one particular that this Bill wishes to introduce a recognition of the representative character of the Administrator-General.

Now, the Administrator-General will be entitled to letters of administration only when there is no next-of-kin or any other person to whom the whole property is bequeathed. The Administrator-General steps in to administer the assets of the deceased, *i.e.*, to realise the assets, to pay the creditors and distribute the amount to the other persons to whom specific bequests, etc., are made. When there is a next-of-kin or heir-at-law, the Administrator-General can have no *locus standi*. When the Administrator-General takes out letters of administration, they will be binding upon all European British subjects, wherever they may be residing, whether in British India or in a Native State. The anomaly arises when letters of administration are granted in Madras in respect of properties situated in Mysore and that too in the hands of non-British subjects who would insist upon the production of a certificate of heirship taken out in the Mysore State. So, there would be two sets of certificates and there would be two administrations. To avoid this inconvenience, a proposal was made by the British Government that the certificate granted by the Madras High Court should be recognised in Mysore, and that the State should not suffer fiscally with regard to the property in the Mysore State. This proposal was accepted and the British Government have undertaken to hand over the fees payable on property situated in the Mysore State. Thus the question of revenue is protected.

Instead of asking the Administrator-General to take out another certificate here and pay an additional fee, the Madras High Court collects the fee and transmits the amount to us. It saves the Administrator-General the formality of proving the will in Mysore Courts over again and of furnishing security also which he has already done once for all on his appointment as Administrator-General. It is to save this inconvenience that this Bill was introduced and it seems to be a perfectly harmless one.

MR. H. V. NANJUNDAYYA.—I think a few words may not be out of place about the scope of this measure.

It is true, as stated by Mr. D. Venkataramaiya, that the administration of one State does not extend to another State. Mysore and British India are different States so far as private International Law is concerned, and so the authority derived from a Court in British India will not extend to any property situated in Mysore. The general practice is that the Court of the place where the property is situate administers the property and appoints an administrator. Then there are different questions arising as to whether in these cases (so far as the property within the limits of the State is concerned) the property should not be governed by the law of domicile. I believe the doctrine that is now most generally held is that it should be governed by the law where the property is situate even in the case of movables. Formerly it was held that in the case of movables the administration granted by a Court of domicile would have effect everywhere. But of late the tendency is even in the case of movables to hold that it should be governed by the law of the place where it may happen to be found.

The Administrator-General is an officer appointed by the British Government. There is an Act passed by that Government, *viz.*, The Administrator-General's Act—which includes Mysore within the jurisdiction of the Administrator-General of Madras. This British-Indian Act can have force only in British India. The Administrator-General being an officer within the jurisdiction of British India, he will have power by virtue of this Act to administer the property of a deceased British subject in Mysore. But this law does not bind the subjects of the Mysore State or the Mysore State either. So, with regard to the property here, the question arises whether the Administrator-General who is vested with the power by the British Act can be admitted to interfere with the property in Mysore. The object of the administration is two-fold, *viz.*, to provide for the proper disposal of the property left by the decedent owner and to give security to persons dealing with the Administrator. For example, the Administrator-General can collect certain debts due to the estate of a deceased person in his capacity as Administrator-General. Suppose he does this in Mysore. There is no guarantee to the debtor in Mysore to make over the money to the Administrator-General. In order to guard the property rights of the deceased for whom the Administrator-General stands and likewise to guard the interests of debtors within Mysore who may deal with the latter, it is necessary that we should legalise the position of the Administrator-General in Mysore.

The claim of the Administrator-General to interfere with property in Mysore is not at all a new one. It was longt acitly recognized, and in many cases of Europeans dying intestate the Administrator-General of Madras has been allowed to take possession of the property and deal with it. Only some years ago the point was noticed and the difficulty was pointed out to the Government. Government then considered that some steps should be taken to legalise the state of matters. There is no question of reciprocity arising in this.

We have no Administrator-General here. This Bill does not propose to recognise all administrations of the Madras Government. It refers only to cases arising in Mysore in which the Administrator-General of Madras can interfere.

As Mr. Narayana Rao has pointed out, the Administrator-General like any other Administrator getting a certificate in British India, has to pay a certain tax in the shape of stamp fees. If the Madras High Court deals with the property in Mysore and levies a tax, that tax should go to the Mysore Government. But this question has been solved by the British Government agreeing that the stamp duty which is due for the property within the Mysore State would be paid over to the Mysore Government.

And then the other point is, even supposing that we do not pass this Bill, the only alternative remaining for us is to ask the Administrator-General to take out a certificate here. The rules of private international law allow Mysore Courts to recognise the character of the Administrator-General when he has been invested with the legal status in the place where the person who has left the property was domiciled. In accordance with this law, our Courts, under the authority of certificates granted in British India, would be bound to give him a certificate. It is only to avoid the formality of taking out another certificate here that this measure is introduced.

So, as Mr. Narayana Rao said, there is no important question of policy involved in this matter, and this Council may safely pass this measure without any misapprehension as to its effects.

MR. D. VENKATARAMAIA.—I was not aware of the fiscal arrangement with the British Government just now explained.

MR. A. RAMANNA.—One matter, of course, is settled, that is, that we are not to be losers inasmuch as we get the money by a refund from the Madras High Court. But a more important question than that of money is the question of our exercising jurisdiction over the property which is situate in our Province. The right to grant certificate is more important than anything else. We should recognise the representative character of the Administrator-General only after he has obtained an administration certificate in Mysore. This is merely a matter of formality, a matter of an application, that is all. He may apply for a certificate, he may take one and nobody will question his right to obtain it. So the power of granting a certificate is, in my humble opinion, one that may be retained. There is no sort of difficulty in applying for and obtaining such a certificate; and having a right with reference to the property situate in our jurisdiction, that we should simply give away jurisdiction to another authority and that we should be only satisfied with getting a refund of the fees, points to the fact that we are giving away a most important privilege, namely, the right of jurisdiction. I am rather very diffident about giving away our right. I for one would not like that there should be any such delegation of the right that is vested in the Durbar.

The motion was put to the Council and carried.

Mr. S. Narayana Rao moved that the Bill be taken up and passed at a subsequent meeting of the Council. This motion was seconded by Mr. Srinivasiengar, put to the Council and carried.

The Council then adjourned.

T. ANANDA ROW,
President.